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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

**IN RE GOOGLE PLAY STORE  
ANTITRUST LITIGATION**

Case No. 3:21-md-02981-JD

THIS DOCUMENT RELATES TO:

**JOINT CASE MANAGEMENT  
STATEMENT**

*Epic Games Inc. v. Google LLC et al.*, Case  
No. 3:20-cv-05671-JD

Date: September 9, 2021

Time: 10:00 a.m.

*In re Google Play Consumer Antitrust  
Litigation*, Case No. 3:20-cv-05761-JD

Courtroom: 11, 19th Floor (via Zoom)

Judge: Hon. James Donato

*In re Google Play Developer Antitrust  
Litigation*, Case No. 3:20-cv-05792-JD

*State of Utah et al. v. Google LLC et al.*, Case  
No. 3:21-cv-05227-JD

Pursuant to this Court’s Order dated August 17, 2021 (*In re Google Play Store Antitrust Litigation*, No. 3:21-md-02981-JD (N.D. Cal. 2021) (“MDL”) Dkt. No. 78), setting a status conference for September 9, 2021, the parties in the above-captioned MDL action (“the Parties”), by and through their undersigned counsel, submit this Joint Statement.

## **I. CASE STATUS SUMMARY**

### **A. Joint Statement re: Case Schedule**

Pursuant to the Court’s orders dated July 22, 2021 and August 17, 2021 (Dkt. Nos. 67 and 78), the Parties submitted to the Court on August 27, 2021 a Joint Statement proposing competing case schedules (Dkt. No. 91), which the Court has indicated that it intends to address at the September 9 status conference (Dkt. No. 93).

### **B. Filing of Unsealed Complaints**

Pursuant to the Court’s orders dated August 18, 2021 and August 25, 2021 (Dkt. Nos. 79 and 89), all of the Plaintiffs have filed unredacted or revised redacted versions of their complaints that comport with the Court’s orders. (Dkt. Nos. 82, 90, 92 and 143).

### **C. Google’s Motion to Dismiss**

Pursuant to the Court’s order dated August 17, 2021 (Dkt. No. 78), Google’s motion to dismiss all actions in the MDL is due to the Court on September 8, 2021, Plaintiffs’ oppositions are due October 15, 2021, and Google’s reply is due November 2, 2021. A hearing on Google’s motion to dismiss is scheduled for November 18, 2021 at 10:00 a.m. With respect to page limits, the Parties agree to follow the same parameters as the prior round of motion to dismiss briefing:

- For the omnibus briefs relating to Google’s challenges that apply across all four complaints: 25 pages for an opening brief; 25 pages in joint opposition; 15 pages in reply.
- The Parties shall each be entitled to file a separate 5-page opening or opposition or a 5-page (3-page if the party had filed a 5-page opening brief on the same issue) reply brief on any individual issues.

In addition, Google and the States separately submitted a stipulation and proposed order addressing the motion with respect to the complaint in the States’ Action, which includes seven

1 federal claims and thirty-seven (37) state law claims. Case No. 3:21-cv-05227-JD, Dkt. No. 151;  
 2 Case No. 3:21-md-02981-JD, Dkt. No. 94. Under that stipulation, for briefing on the unique  
 3 issues that relate solely to the States' Action, Google and the States agree to follow the Court's  
 4 standing order on briefing for motions—namely, opening and opposition briefs may not exceed  
 5 15 pages, and the reply brief may not exceed 10 pages—and respectfully request the Court's  
 6 approval.

7 **D. Forthcoming Amendment of Stipulated Protective Order and**  
 8 **Supplemental Stipulated Protective Order**

9 The Court approved and entered a Stipulated Protective Order on December 10, 2020  
 10 (see Case No. 3:20-cv-05671-JD, Dkt. No. 110, approving Dkt. No. 106-1; Case No. 3:20-cv-  
 11 05761-JD, Dkt. No. 117, approving Dkt. No. 109-1; Case No. 3:20-cv-05792-JD, Dkt. No. 78,  
 12 approving Dkt. No. 76-1), and a Stipulated Amended Supplemental Protective Order Governing  
 13 Production of Protected Non-Party Materials on May 20, 2021 (see Case No. 3:21-md-02981-JD,  
 14 Dkt. No. 40, approving Dkt. No. 44; 3:20-cv-05671-JD, Dkt. No. 144, approving Dkt. No. 147;  
 15 3:20-cv-05761-JD, Dkt. No. 162, approving Dkt. No. 165; 3:20-cv-05792-JD, Dkt. No. 113,  
 16 approving Dkt. No. 117). The States believe these protective orders are in need of amendment to  
 17 accommodate state laws regarding public records access and document retention matters. The  
 18 States have started the meet and confer process to propose a Stipulated Amended Protective  
 19 Order and a Stipulated Supplemental Amended Protective Order, which they will submit to the  
 20 Court once those discussions are complete.

21 **II. STATUS OF DISCOVERY**

22 **A. Fact Depositions**

23 The Parties have begun to meet and confer regarding fact depositions and will submit to  
 24 the Court a stipulated deposition protocol, or their respective positions, this month. The Parties  
 25 intend to notice depositions for the fall.

**B. Document Discovery Update**

The Parties have made significant progress to date and continue to engage in discovery on a range of topics. There are meet and confers underway to address outstanding discovery issues, and the Parties are hopeful that these issues will be resolved through negotiation. In addition, because the Parties are meeting and conferring regarding the need to amend the Stipulated Protective Orders as discussed in Section I.D above, and because the Rule 26(f) conference between the States and Google is still ongoing as of the filing of this Joint Statement, the States have not been provided with document discovery exchanged between the various Parties.

**C. Discovery Issues**

**i. Production of Documents Produced to the States During Investigations.**

In connection with governmental investigations of Google, Google has produced millions of documents to the States that are party to this MDL. Certain of the documents produced by Google were referenced in the States' complaint, which was filed on July 7, 2021.

The Consumer Plaintiffs, Developer Plaintiffs, and Epic previously served a request for production of documents seeking "all documents [] produced to any federal, state, or local governmental or regulatory entity, U.S. or foreign agency" relating to Google Play or the distribution of apps on Android.<sup>1</sup> Epic also served Google with an interrogatory asking Google to

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<sup>1</sup> RFP No. 2: "Please produce all DOCUMENTS YOU have produced to any federal, state, OR local governmental OR regulatory entity, U.S. OR foreign agency, INCLUDING to the European Union, U.S. OR state agency (INCLUDING any attorney general's office OR European Commission) OR congressional committee (INCLUDING the U.S. House Committee on the Judiciary, in response to its September 13, 2019 letter to YOU), OR that YOU have received from any such governmental OR regulatory entity, U.S. OR foreign, RELATING TO: (a) GOOGLE PLAY; (b) any OTHER APP MARKETPLACE OR SOFTWARE STORE; (c) distribution services YOU provide to ANDROID DEVELOPERS RELATING TO DIGITAL PRODUCTS available for download OR sold via OR in GOOGLE PLAY STORE OR as an IN-APP PURCHASE; (d) GOOGLE PLAY BILLING; (e) IN-APP PURCHASES; (f) OEMs OR WIRELESS SERVICE PROVIDERS; (g) ADMOB or ANY other DIGITAL PRODUCT related advertising service that YOU provide or make available to ANDROID DEVELOPERS; (h)

1 “[i]dentify each Legal Action and/or Investigation into Competition Concerning Google Play or  
2 the distribution of Apps on Android.”

3 Once it became clear that documents relating to the subject matter of this case were  
4 produced to the States but not to the other Plaintiffs (*e.g.*, eight of the twenty-one documents cited  
5 in the States’ Complaint), the Parties promptly began to meet and confer regarding the issue of  
6 producing to the other Plaintiffs the documents that Google previously produced to the States. The  
7 Plaintiffs have also asked Google to amend its response to Epic’s interrogatory to identify the  
8 document requests, subpoenas, Civil Investigative Demands (“CIDs”), or other process that  
9 Google received and pursuant to which it previously produced the documents at issue to the States.  
10 That meet-and-confer process, which began on August 2, 2021,<sup>2</sup> has not resolved the issue.

11 It is Plaintiffs’ position that the documents produced by Google to the States, and the  
12 content of the requests pursuant to which those documents were produced, represent a material  
13 amount of relevant information that Google has not yet agreed to produce in this case. The thirty-  
14 seven States, all of whom are now Parties to this MDL, have this information. The States have  
15 used this information in filings before the Court, and ostensibly will continue to do so. The other  
16 Plaintiffs simply seek to level the playing field and ensure equal access to information that has  
17 already been reviewed by Google and produced to the States in response to prior investigative  
18 demands. The States agree with the other Plaintiffs that the issue concerning Google’s obligation  
19 to produce relevant materials that it previously produced to the States during the governmental  
20

21 ANDROID licensing; (i) ANDROID DEVICES; (j) MALWARE; (k) Google Play Protect; (l)  
22 ANDROID DEVELOPERS; (m) DIGITAL PRODUCTS sold via OR in GOOGLE PLAY as to  
23 which YOU paid OR transmitted any sum of money to ANDROID DEVELOPERS; (n) sales of  
24 ANY DIGITAL PRODUCTS via OR in GOOGLE PLAY; (o) downloads of ANY DIGITAL  
25 PRODUCTS via OR in ANY OTHER APP MARKETPLACE; (p) YOUR Lockbox project; (q)  
26 Google Mobile Services OR Google Play Services; (r) DIGITAL PRODUCTS sold via or in ANY  
27 OTHER APP MARKETPLACE; (s) the implementation of any judgment, order, settlement, OR  
28 other governmental requirement that YOU have undertaken from 2008 to the present; OR (t)  
monopoly, attempted monopoly, monopsony, attempted monopsony, OR anti-competitive  
behavior by YOU RELATING TO GOOGLE PLAY OR GOOGLE PLAY BILLING.”

<sup>2</sup> The Parties have met and conferred on this issue extensively, including by letter on August 2,  
by teleconference on August 24, by teleconference on August 31, and through discussions of this  
Joint Case Management Statement that began on September 1.

1 investigations is ripe. The States also believe that they should have the right to use in this case  
2 any such investigative materials that they deem relevant, and to share those materials with the  
3 other Plaintiffs without undue limitations. Despite the Parties' good faith efforts to resolve the  
4 issue of when and whether Google will produce this information, the Parties have not yet been  
5 able to do so.

6 Google believes that this issue can and should be resolved efficiently through a meet and  
7 confer process. Google made a specific proposal to Plaintiffs on this issue on the morning of  
8 September 2, 2021. Plaintiffs responded by rejecting the proposal but indicating a willingness to  
9 consider any alternative proposal that Google may make prior to the upcoming September 9 status  
10 conference. Google disagrees in part with Plaintiffs' current position on this issue, but intends to  
11 provide an updated proposal to Plaintiffs in advance of the status conference. Google looks  
12 forward to updating the Court at the status conference on its efforts to meet and confer. In the  
13 meantime, Google respectfully disagrees with the characterization of the background on this issue.  
14 Google's position has been -- and remains -- that only relevant documents should be produced in  
15 this MDL, based on principles of efficiency and reasonableness. Google's efforts in the coming  
16 week will be aimed to achieve that outcome.

1 Dated: September 3, 2021

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**E-FILING ATTESTATION**

I, Yonatan Even, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in this filing.

*/s/ Yonatan Even*

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